

REGULATION OF WATERCRAFT AND SNOWMOBILE DEALERSHIPS

House Bill 6178

Sponsor: Rep. Tom Alley

Committee: Commerce

Complete to 10-6-98

A SUMMARY OF HOUSE BILL 6178 AS INTRODUCED 9-23-98

House Bill 6178 would create a new act to regulate personal watercraft and snowmobile manufacturers, wholesalers, dealers, and their representatives; their dealings with each other; and, their dealings with consumers. The bill also would prohibit unfair practices and set penalties for violation of the act. A brief description of the bill's key provisions follows.

Definitions. The bill contains definitions of "dealer agreement," "designated family member," "established place of business," "factory branch," and "factory representative." The section would establish a wholesale and retail sales and distribution system, governed by a written contract between a manufacturer and a new dealer (with an entitled inheritance upon a new dealer's death). The bill would provide for factory representatives who, as manufacturers' representatives, would serve as wholesalers to the new dealer-retailers.

The bill contains definitions of "good faith," "manufacturer," "new recreational vehicle or recreational vehicle," "new recreational vehicle dealer," "person," and "proposed new recreational vehicle dealer." A recreational vehicle is defined as a personal watercraft or a snowmobile. "New recreational vehicle dealer" would mean a person who holds a dealer agreement granted by a manufacturer for the sale of its recreational vehicles, who is engaged in the business of purchasing, selling, exchanging, or dealing in the new recreational vehicles, and who has an established place of business in this state.

Relevant Market Areas. The bill would establish "relevant market areas" and define them for counties with populations less and greater than 25,000. For a county having 25,000 or more people, a relevant market area for a new dealer, or a new dealer who plans to relocate, would be the area within a radius of six miles of the intended site of the proposed or relocated dealer. (The six mile distance would be determined by measuring the distance between the nearest surveyed boundary of the existing new recreational vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated dealer's business.) For a county having less than 25,000 people, it would be the area within a radius of 10 miles.

Termination of a Dealer Agreement. The bill describes the conditions under which a manufacturer could cancel, terminate, fail to renew, or refuse to continue a dealer agreement. Generally, a manufacturer could not do so unless he or she had acted in good faith, had good cause, had offered the dealer a written notice of failure of performance citing noncompliance with provisions of the dealer agreement, and acquired knowledge of a failure of performance not more

than two years prior to the notice. Under this provision, good cause for cancellation would exist when a written notice had been given, and the dealer had been given a reasonable opportunity to exert good faith efforts to carry out the dealer agreement.

The bill specifies four reasons that would not be sufficient for termination of the agreement. They include: a change of ownership; the refusal of the dealer to purchase or accept parts, accessories, or other commodities or services not ordered; the fact that the dealer owns, has invested in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new recreational vehicles, or has established another line in the same dealership facilities (provided the dealer has maintained a reasonable line of credit for each make or line, and has stayed in compliance with the terms and conditions of the dealer agreement and with the reasonable facilities' requirements of the manufacturer); or, the fact that the dealer has sold or transferred the dealership to his or her spouse, son, or daughter (provided that the sale or transfer did not have the effect of a sale or an assignment of the dealer agreement, or a change in the principal management of the dealership without the manufacturer's prior written consent).

The manufacturer would have the burden of proof for showing that it had acted in good faith in the instance of termination, cancellation, nonrenewal, or discontinuance.

The bill would require that a manufacturer furnish notice of a termination to the dealer, not less than 90 days before the effective date of the termination, and by certified mail. The notice would be required to contain a statement of intent to terminate, a statement of the reasons, and the date on which the termination would take effect. However, the bill would allow for a notice of termination in not less than 15 days in the case of dealer insolvency or the filing of a bankruptcy petition; failure to conduct business hours for seven consecutive days; the conviction of a crime if it is punishable by imprisonment in excess of one year, or the crime involved theft, dishonesty, or false statement regardless of punishment; revocation of a license that the dealer is required to have to operate the dealership; or, a fraudulent misrepresentation by the dealer to the manufacturer that is material to the dealer agreement.

Compensation upon Termination of A Dealer Agreement. The bill specifies that upon termination, a dealer would be entitled to fair and reasonable compensation by the manufacturer for all inventory (under certain conditions); supplies and parts; equipment, furnishings, and signs; and, special tools purchased within three years of the termination. The bill would require that the manufacturer pay the dealer a sum equal to the current, fair rental value of his or her established place of business for a period of one year from the effective date of termination, not to exceed \$20,000 and subject to certain conditions (unless, as specified above, the termination was for insolvency, a seven-day lapse in business, conviction of a crime, revocation of a necessary license, or fraudulent misrepresentation).

Compensation for inventory would have to be paid, if at all possible, within 30 days after the effective date of the termination, and compensation for items of personal property within 90 days. Fair and reasonable compensation for inventory would be not less than the dealer's net acquisition cost. Fair and reasonable compensation for parts and supplies would be the amount stated in the manufacturer's current parts price list. Fair and reasonable compensation for equipment, furnishing, signs, and special tools purchased from the manufacturer would be the fair

market value of personal property. In the event that payment was not made in 90 days, interest would accrue at a rate of 12 percent per annum.

Prohibited Manufacturer Practices and Dealer Responsibilities. The bill specifies that a manufacturer could not require a dealer to: accept delivery of vehicles not voluntarily ordered; accept vehicles with special features not included in the list price as publicly advertised by the manufacturer; participate monetarily in an advertising campaign or contest, or purchase promotional materials; enter into an agreement with the manufacturer or do any act prejudicial to the dealer by threatening to terminate a dealer agreement or contractual agreement or understanding existing between the dealer and the manufacturer; change the capital structure of the dealership or the means by which the dealer finances the operation; refrain from participating in the management of, investment in, or acquisition of any other line of new recreational vehicle or related products; change the location of the dealership or make substantial alterations to the dealership premises, if to do so would be unreasonable; prospectively assent to a release that would relieve a person from liability, or require a controversy between a dealer and a manufacturer to be referred to a person other than the courts, if the referral would be binding on the dealer.

The bill would prohibit manufacturers from failing to make vehicle deliveries in a reasonable time; refusing to disclose distribution procedures and protocols; refusing to disclose the total number of vehicles of a given model that the manufacturer sold during the current model year within a dealer's market district, zone, or region, whichever geographic area is the smallest; increasing a vehicle's price after a consumer sales contract was signed (however, a price reduction would be passed on to the consumer, and this provision would not apply to certain specified price changes); offering a vehicle line or making a refund or other inducement to selected dealers while excluding others; releasing business, financial, or personal information about a dealer; denying a dealer the right to associate with another dealer; establishing a dealership that would unfairly compete with a dealer of the same line make operating under a dealer agreement in the relevant market area (with certain exceptions); unreasonably withholding consent to the sale, transfer, or exchange of a dealership; failing to respond in writing to a request for consent to a sale or transfer within 60 days after receipt of a written application; or, unfairly preventing a dealer from receiving reasonable compensation for the value of a dealership. Under the bill, a manufacturer also would be prohibited from terminating a lease of a dealer's established place of business except for a material breach of the lease.

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